

## **FINAL STATEMENT OF REASONS**

### **California Resources Agency CEQA Guidelines Amendments to Subdivisions (h) and (j) of Section 15251 of Title 14 of the California Code of Regulations**

**(OAL Notice File Number Z-06-0328-04)**

**June 2006**

## **INTRODUCTION**

The California Resources Agency (“the Resources Agency”) proposes to amend subdivisions (h) and (j) of section 15251 of the guidelines implementing section 21080.5 of the Public Resources Code. Section 21080.5 is included in the California Environmental Quality Act (“CEQA”), which is set forth in sections 21000-21177 of the Public Resources Code. The guidelines implementing CEQA are set forth in sections 15000-15387 of title 14 of the California Code of Regulations (“CEQA Guidelines”). Additionally, Resources Agency proposes to make non-substantive changes to the numbering within section 15251 of the CEQA Guidelines.

The Resources Agency published its Notice of Proposed Rulemaking on April 7, 2006. No hearing was scheduled and no hearing was requested by any member of the public. The last day for written comment was May 22, 2006. No written comments on the proposed rulemaking were received by the Resources Agency.

As previously stated within the Notice of Proposed Rulemaking, this Final Statement of Reasons will be posted on the Resources Agency’s website at [www.ceres.ca.gov/ceqa/index.html](http://www.ceres.ca.gov/ceqa/index.html).

The following is intended to meet the requirements of section 11346.9 of the Government Code for a final statements of reasons.

## **1. Update of Information Contained in the Initial Statement of Reasons**

No update of information contained in the initial statement of reasons has been made because the Resources Agency made no changes to the initial statement of reasons. Additionally, as stated in the foregoing, no public comment was received on the proposed rulemaking.

## **2. Local Mandate Determination**

Subdivision (a)(2) of section 11346.9 of the Government Code requires the final statement of reasons to include a determination as to whether the amendments in this action impose a mandate on local agencies or school districts.

The Resources Agency has determined that the proposed amendments to the CEQA Guidelines will not impose a mandate on local agencies or school district. Section 15251 of the Guidelines lists the regulatory programs certified by the Secretary for Resources that are exempt from the requirements for preparing EIRs, negative declarations, and initial studies. The two proposed amendments withdraw the certification from two regulatory programs, but do not impose any affirmative mandate on local agencies or school districts. Specifically, one of the proposed amendments withdraws certification from a weather management program of the Department of Water Resources that has been repealed by the Legislature. (See Cal. Code Regs., tit. 14, § 15251, subd. (j)) The withdrawal of certification from this defunct program does not impose a mandate on local agencies or school districts.

The second proposed amendment withdraws certification from a permit program under the Suisun Marsh Preservation Act that is administered by San Francisco Bay Conservation and Development Commission ("BCDC"). (See Cal. Code Regs., tit. 14, § 15251, subd. (h).) BCDC has decided to stop using this certified regulatory program, and instead to implement the program through the general CEQA requirements set forth in the Public Resources Code and BCDC's regulatory provisions (commencing with section 10110 of title 14 of the California Code of Regulations). The withdrawal of certification from a permit program that BCDC does not intend to use does not impose a mandate on local agencies or school districts.

### **3. Summaries and Responses to Comments**

The Resources Agency received no comments on the proposed rulemaking or to the procedures followed by the Resources Agency in proposing or adopting the rulemaking action.

### **4. Consideration of Alternatives**

Subdivision (a)(4) of section 11346.9 of the Government Code requires the final statement of reasons to include a determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. Subdivision (a)(5) of section 11346.9 of the Government Code requires the final statement of reasons to include an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

As stated in the foregoing, the Resources Agency received no comments on the proposed rulemaking. No proposed alternatives were proposed to the Resources Agency.

As previously stated in the Initial Statement of Reasons, the Secretary has considered the alternative of taking no action. With respect to DWR's request, the no-action alternative would be not to withdraw certification of DWR's regulatory program governing the regulation of weather resources management projects through the issuance of operating permits. The Secretary has rejected this alternative, because under section 21080.5(e) of the Public Resources Code, the Secretary must withdraw certification upon determining that the regulatory program has been altered such that it no longer meets specified qualifications. Because the statutory licensing and permit requirements for the weather management project have been repealed, and DWR subsequently repealed its regulations implementing the program, the Secretary must withdraw certification.

With respect to BCDC's request, the alternative would be not to withdraw certification of BCDC's permit program under the Suisun Marsh Preservation Act. The Secretary has rejected this alternative because BCDC no longer intends to rely on its certified regulatory program in issuing permits under the Suisun Marsh Preservation Act. Instead, BCDC will comply with the applicable provisions of CEQA. BCDC has informed the Secretary that this decision is intended to enhance the transparency of BCDC's CEQA process. The failure to withdraw certification of BCDC's permit program under the Suisun Marsh Preservation Act, which BCDC will no longer use, would be confusing to the public and would interfere with BCDC's goal of enhancing the transparency of its process.

Accordingly, the Secretary has determined it is necessary to withdraw certification of this program.

## **5. Location of Rulemaking File**

A copy of the rulemaking file is available for public inspection at:

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Contact: Sandra S. Ikuta, (916) 653-5656